PAGE WITHHELD PURSUANT TO
(b)(5)

PAGE WITHHELD PURSUANT TO
(b)(5)

PAGE WITHHELD PURSUANT TO
(b)(5)

PAGE WITHHELD PURSUANT TO
(b)(5)

PAGE WITHHELD PURSUANT TO
(b)(5)

PAGE WITHHELD PURSUANT TO
(b)(5)

LEON WILDES
ATTORNEY AT LAW
515 MADISON AVENUE
NEW YORK, NEW YORK 10022
(212) 753-3468

JON HOLDEN ADAMS

CABLE ADDRESS
"LEONWILDES," N.Y.

May 1, 1972

Hon. Ira Fieldsteel, Esq.,
Special Inquiry Officer
Immigration and Naturalization Service
New York, New York

(b)(6)

Re: LENNON, John A17 597 321
LENNON, Yoko [redacted]

Dear Sir:

In accordance with the provisions of 8 C.F.R. 287.4, I respectfully request, in behalf of my clients, the above named respondents, that subpoenas requiring the attendance of witnesses issue to the persons listed below.

I intend to submit the testimony of the witnesses on the attached list in support of the applications for adjustment of status under section 245 of the Immigration and Nationality Act, in support of the alternative application for permission to depart voluntarily, and further in support of any relevant issue upon which the exercise of the discretion of the Special Inquiry Officer is properly invoked, including the renewal of my motion to terminate the deportation proceedings in either or both cases.

My clients have made diligent effort without success to produce the said witnesses but have been unsuccessful. In the cases of the first 3 witnesses, who are overseas, it would suffice that the subpoena shall provide for the witnesses' appearance to respond to oral or written interrogatories, if the Service objects to their personal appearance in the United States.

LEON WILDES
ATTORNEY AT LAW
515 MADISON AVENUE
NEW YORK, NEW YORK 10022

(212) 753-3468

JON HOLDEN ADAMS

CABLE ADDRESS
"LEONWILDES," N.Y.

Thank you for your courtesy herein.

Very truly yours,

LEON WILDES, ESQ.,
Attorney for Respondents
515 Madison Avenue
New York, New York 10022

LW/ba
enc.
Delivered by hand

PAGE WITHHELD PURSUANT TO
(b)(6)

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

April 27, 1972

Hon. Raymond F. Farrell
Commissioner
Immigration and Naturalization Service
United States Department of Justice
119 D Street
N.E., Washington, D.C. 20536

Dear Commissioner Farrell:

I am writing this letter to you on behalf of John Lennon and Yoko Ono who are currently facing deportation proceedings inititated by your Department.

I consider it to be very much in the public interest, from the point of view of the citizens of New York as well as the citizens of the Country, that artists of their distinction be granted residence status.

They have personally told me of their love for New York City and that they wish to make it their home. They have made me familiar with the tragic hardship involved in their desperate effort to find Yoko's 8 year old child, Kyoko. I believe this is the type of hardship that our Immigration laws must recognize and the removal of the Lennons from this Country would be contrary both to the principles of our Country as well as the humanitarian practices which should be implemented by the Department of Immigration.

The only question which is raised against these people is that they do speak out with strong and critical voices on major issues of the day. If this is the motive underlying the unusual and harsh action taken by the Immigration and Naturalization Service, then it is an attempt to silence Constitutionally protected 1st Amendment rights of free speech and association and a denial of the civil liberties of these two people.

In light of their unique past and present contribution in the fields of music and the arts, and considering their talent to be so outstanding as to be ranked among the greatest of our time in these fields, a grave injustice is being perpetuated by the continuance of the deportation proceeding.

Very truly yours,

John V. Lindsay
M A Y O R

cc: Attorney General Richard G. Kleindienst
Commissioner Sol Marks
Senator Jacob Javits
Senator James Buckley

Mr. Schwin

Sec

(b)(6)

A17 597 321

[redacted]

April 26, 1972

MEMORANDUM FOR FILE

In re: John LENNON
Yoko Ono LENNON

Attorney Millard Ring appeared today and stated that the Lennons have been offered an appearance on the Dick Cavett show for Wednesday, May 3, 1972. He wanted to know whether he could file an I-129B for them or whether they could appear without the filing of the petition. Attorney Ring is aware of the present deportation proceedings pending against the Lennons.

I informed Mr. Ring that we would not at this time entertain an I-129B since both subjects are under deportation proceedings. I also told him that it would be highly improper for them to appear on the Dick Cavett show or any other show during the pendency of the deportation proceedings. Mr. Ring pointed out that any other alien who is under deportation proceedings is permitted to accept or continue his employment until a final decision is reached. He saw no reason why the same principle does not apply to the Lennons. Without acknowledging the correctness of his statements, I merely repeated again that it would be most improper for them to accept the offer on the Dick Cavett show or any other offer.

A. SPIVACK
Assistant District Director
for Travel Control

75

March 2, 1972

MEMORANDUM FOR FILES:

(b)(6)

Re: John LENNON - A17 597 321 (Conf.)
Yoko Ono LENNON - [redacted])

Associate Commissioner Greene telephonically advised today that we should immediately revoke the voluntary departure granted to John Lennon and his wife. An O.S.C. should be issued for both aliens and served upon them with a return date of March 16, 1972.

Mr. Greene further stated that under no circumstances should this office approve the I-130 filed by Lennon. This is a direction of Commissioner Farrell personally. Further action on the petition will therefore not be taken unless cleared by the undersigned with Mr. Greene.

Mr. Spivack has been advised.

SOL MARKS
District Director
New York District

cc: Mr. Spivack

000850 (15015 MSCCH424122

Feb 28 8 14 AM '72

BAAUIJAZ RUEVDEB0076 0560045-UUUU--RUGSGCH.

JIDC

R 250045Z FEB 72

FM LEHMANN CO JINS WASHINGTON DC

TO RUGSGCH/ALL DISTRICT AND REGIONAL OFFICES(EXCEPT FOREIGN)JINS

TO RUVLSBT/1/DO JINS HONOLULU HAWAII

TO RUZBALB/1/DO USINS 143 PO-COURTHOUSE BLDG ANCHORAGE ALASKA

TO RUEVFCB/1/DO USINS PAN AM BLDG HATO REY PUERTO RICO

BT

UNCLAS

BAXEX-13 P-3 A17 595 381. IF JOHN WINSTON LENNON BORN 10-9-40 ENGLAND ADMITTED 8-13-71 AT NYC B-2 PURSUANT SECTION 212(D)(3) APPLIES FOR EXTENSION OF STAY, ADJUSTMENT OF STATUS, OR HAS A VISA PETITION FILED IN HIS BEHALF DEFER ACTION AND CONTACT COMM MASON. NOTIFY ALL OFFICES AND PORTS WITHIN YOUR JURISDICTION WHO ADJUDICATE EXTENSIONS OF STAY AND ADJUSTMENT OF STATUS AND PETITIONER BENED DIDIRS. RETIL ROCOMS.

BT

RECEIVED

FEB 28 1972

TRAVEL CONTROL BRANCH

Thera preference approval
removed for purposes of processing
T485 5/14/76 Denton

filed 3/6/72 - notice 5/2/72
(Composer - musician)

(b)(6)

April 24, 1972

A17 597 321

Leon Wildes, Esq.
515 Madison Avenue
New York, New York

Re: John Lennon
Yoko Ono Lennon

Dear Mr. Wildes:

Your letter of March 15, 1972 contains the request that deportation proceedings relating to the above-named aliens cancelled pursuant to the authority of 8 CFR 242.7.

The information you submitted as well as other relevant material has been carefully reviewed. You have been aware that it is the Government's position that the male respondent is not eligible to adjust his status to that of a permanent resident in view of his conviction in England. The arguments that you have presented both in your communications and at the deportation proceedings are not sufficiently persuasive in view of the male respondent's conviction and other circumstances in this case. Accordingly, your request is denied.

Of course, you have already been advised of this decision orally and this merely constitutes written confirmation of the decision already furnished to you.

Very truly yours,

SOL MARKS
DISTRICT DIRECTOR
NEW YORK DISTRICT

CO 703.1080

Dear Mr. Terry:

Reference is made to your letter of April 11, 1972 with enclosure from Mrs. J. R. Heard concerning Mr. John Lennon.

Mr. Lennon is ineligible for a visa and admission into the United States because of a conviction of possessing marijuana. An alien convicted of such an offense may not be admitted for permanent residence. However, his entry may be authorized under a special provision of law for a temporary visit.

Mr. Lennon's present visit to the United States was authorized under this special provision of law for business purposes and to attend a custody hearing in court proceeding in connection with Mrs. Lennon's child by a previous marriage. His entry was authorized for these purposes upon the recommendation of the Department of State after all of the factors in his case had been carefully evaluated.

Since Mr. Lennon did not depart from the United States within the time authorized, he is presently the subject of deportation proceedings.

Sincerely,

Raymond F. Farrell
Commissioner

Honorable John H. Terry
House of Representatives
Washington, D. C. 20515

Enclosure

CC: A17 597 321 (NYC)

(c) CC: W/F - John Lennon [redacted])

TC:MJM:anb

HOUSE OF REPRESENTATIVES, U.S.
WASHINGTON, D.C.

RECEIVED
IMM. & NATZ. S.C.
1972 APR 13 AM 10:20
OFFICE OF THE COMMISSIONER

April 11, 19 72

The Honorable Raymond F. Farrell
Commissioner
Immigration & Naturalization Service
119 D Street, NE
Washington, D. C.

DC

The attached communication is submitted for your consideration, and to ask that the request made therein be complied with, if possible.

If you will advise me of your action in this matter and have the letter returned to me with your reply, I will appreciate it.

RE attached from

(b)(6)

[redacted]

Very truly yours,

John H. Terry

John H. Terry, M.C.

34th New York District.

PAGE WITHHELD PURSUANT TO
(b)(6)

LEON WILDES
ATTORNEY AT LAW
515 Madison Avenue
New York, N.Y. 10022
PLAZA 3-3468

CABLE ADDRESS
"LEONWILDES," N. Y.

April 20, 1972

Immigration & Naturalization Service
20 West Broadway
New York, N.Y. 10007

Re: LENNON, John
A17 597 321
LENNON, Yoko

(b)(6) [redacted]

Attention: Hon. Sol Marks, District Director

Dear Sir:

This will confirm our telephone conversation of March 17, 1972 in which you informed me that you were denying my motion to cancel the above deportation proceedings. The denial was reiterated by the trial attorney, who indicated that he would be pleased to furnish me with a written decision stating the basis for the denial of the motion. I requested the written decision on the 18th and again on April 19th and have not yet received the favor of such a decision.

I have also requested permission to read my clients' administrative files to secure information necessary with respect to the pending third preference petitions and the forthcoming applications for permanent residence. A review of the file is also necessary for the purpose of considering appropriate review of the negative determination of my motion to cancel the order to show cause in deportation proceedings, which I assume is based upon evidence of record in the file. As you know, I have represented these aliens only for the past several months and I would therefore wish to familiarize myself with their prior immigration records.

In view of the fact that time is of the essence, I shall again telephone your office to see whether I can secure the written determination and inspection of the file before the end of the week.

This request is made pursuant to the terms of 8 C.F.R. 292.4 (b). Many thanks for your cooperation.

Very truly yours,

LEON WILDES

LW:de

P.S. This will confirm our phone conversation of this morning in which you agreed to make the files available for my inspection through the Trial Attorney and to furnish a written decision on our motion promptly. Thank you for your courtesy.

P.P.S. I note that the third preference petition was filed on March 3rd and that you indicated it was "under consideration" while the I-140 unit has no knowledge of the petition whatsoever. Perhaps you could advise me specifically as to the status of the petitions.

By Hand

LEON WILDES
ATTORNEY AT LAW
515 MADISON AVENUE
NEW YORK, NEW YORK 10022
(212) 753-3468

CABLE ADDRESS
"LEONWILDES," N.Y.

STEVEN L. WEINBERG

April 20, 1972

Immigration & Naturalization Service
20 West Broadway
New York, N.Y. 10007

Re: LENNON, John
A17 597 321
LENNON, Yoko

(b)(6)

Attention: Hon. Sol Marks, District Director

Dear Sir:

This will confirm our telephone conversation of March 17, 1972 in which you informed me that you were denying my motion to cancel the above deportation proceedings. The denial was reiterated by the trial attorney, who indicated that he would be pleased to furnish me with a written decision stating the basis for the denial of the motion. I requested the written decision on the 18th and again on April 19th and have not yet received the favor of such a decision.

I have also requested permission to read my clients' administrative files to secure information necessary with respect to the pending third preference petitions and the forthcoming applications for permanent residence. A review of the file is also necessary for the purpose of considering appropriate review of the negative determination of my motion to cancel the order to show cause in deportation proceedings, which I assume is based upon evidence of record in the file. As you know, I have represented these aliens only for the past several months and I would therefore wish to familiarize myself with their prior immigration records.

In view of the fact that time is of the essence, I shall again telephone your office to see whether I can secure the written determination and inspection of the file before the end of the week.

This request is made pursuant to the terms of 8 C.F.R. 292.4 (b). Many thanks for your cooperation.

Very truly yours,

LEON WILDES

LW:de

P.S. This will confirm our phone conversation of this morning in which you agreed to make the files available for my inspection through the Trial Attorney and to furnish a written decision on our motion promptly. Thank you for your courtesy.

P.P.S. I note that the third preference petition was filed on March 3rd and that you indicated it was "under consideration" while the I-140 unit has no knowledge of the petition whatsoever. Perhaps you could advise me specifically as to the status of the petitions.

By hand

72

FORM G-325 A (REV. 4-1-70)

Form Approved
Budget Bureau No. 43-R436

BIOGRAPHIC INFORMATION

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

(Family name)	(First name)	(Middle name)	☒ MALE ☐ FEMALE	BIRTHDATE (Mo.-Day-Yr.)	NATIONALITY	ALIEN REGISTRATION NO.
LENNON	John	Winston Ono		10/9/40	British	A17 597 321

ALL OTHER NAMES USED	CITY AND COUNTRY OF BIRTH	SOCIAL SECURITY NO. (If any)
None	Liverpool, England	

	FAMILY NAME	FIRST NAME	DATE, CITY AND COUNTRY OF BIRTH (If known)	CITY AND COUNTRY OF RESIDENCE
FATHER	LENNON	Alfred	Liverpool, England	Brighton, England
MOTHER (Maiden name)	STANLEY	Julia	Liverpool, England	Deceased

SPOUSE (If none, so state)	FAMILY NAME (For wife, give maiden name)	FIRST NAME	BIRTHDATE	CITY & COUNTRY OF BIRTH	DATE OF MARRIAGE	PLACE OF MARRIAGE
	ONO	Yoko				

FORMER SPOUSES (If none, so state) FAMILY NAME (For wife, give maiden name)	FIRST NAME	BIRTHDATE	DATE & PLACE OF MARRIAGE	DATE AND PLACE OF TERMINATION OF MARRIAGE
Powell	Cynthia			England

(b)(6)

APPLICANT'S RESIDENCE LAST FIVE YEARS. LIST PRESENT ADDRESS FIRST.

STREET AND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
						PRESENT TIME	
105 Bank Street	New York	New York	U.S.A.	11	71	11	71
St. Regis Hotel	New York	New York	U.S.A.	8	71	11	71
Tittenhurst, London Rd. Ascot		Berkshire	England	11	69	8	71
Kenwood, Cavendish Rd. Weybridge			England	(5 years)		11	1969
St. Georges Hill,							

Show below last foreign residence of more than one year if not shown above. (Include all information requested above.)

APPLICANT'S EMPLOYMENT LAST FIVE YEARS. (IF NONE, SO STATE.) LIST PRESENT EMPLOYMENT FIRST.

FULL NAME AND ADDRESS OF EMPLOYER	OCCUPATION (SPECIFY)	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
				PRESENT TIME	
(Self employed artist)		(Past 5 years)			

Show below last occupation abroad if not shown above. (Include all information requested above.)

THIS FORM IS SUBMITTED IN CONNECTION WITH APPLICATION FOR:
☐ NATURALIZATION ☒ ADJUSTMENT OF STATUS
☐ OTHER (SPECIFY):

SIGNATURE OF APPLICANT OR PETITIONER — DATE

ARE ALL COPIES LEGIBLE? ☒ Yes

IF YOUR NATIVE ALPHABET IS IN OTHER THAN ROMAN LETTERS, WRITE YOUR NAME IN YOUR NATIVE ALPHABET IN THIS SPACE:

PENALTIES: SEVERE PENALTIES ARE PROVIDED BY LAW FOR KNOWINGLY AND WILLFULLY FALSIFYING OR CONCEALING A MATERIAL FACT.

APPLICANT: BE SURE TO PUT YOUR NAME AND ALIEN REGISTRATION NUMBER IN THE BOX OUTLINED BY HEAVY BORDER BELOW.

COMPLETE THIS BOX (Family name)	(Given name)	(Middle name)	(Alien registration number)
LENNON	John	Winston Ono	A17 597 321

(OTHER AGENCY USE)

INS USE (Office of Origin)

(4) Consul

FORM G-325A

☆ U.S. GOVERNMENT PRINTING OFFICE: 1970-401-832

> It is consonant with the aforementioned purpose of Congress to include a provision relating to possession alone to obviate the burden of proving possession for a specific purpose. Any disposable narcotic in the possession of anyone is potentially in the narcotic traffic. The object was to accomplish by the best means possible the elimination of the illicit traffic" (emphasis supplied).

In substance therefore, what the court was saying was that Congress was trying to reach the traffic in drugs, that it facilitated such object by making mere possession a deportable offense, but that possession implies such a dominion and control as would give the possessor of the power of disposal. Consequently it was reluctant to say that an alien who merely had the narcotics within his bloodstream where it might have been injected by some other person, had such dominion and control as would give him power of disposal. It is perfectly clear from the decision however that a mere possession without intent to traffic in drugs would be sufficient to bring the alien within the statute since he would have such dominion and control as would give him the power of disposal.

What then did Mr. Lennon admit by his plea of guilty? The provisions of the Dangerous Drug Act of 1965 and the regulations which were promulgated under the 1964 Act and continued in effect under the 1965 Act are included in the record herein and are set forth also in the brief of the respondent at pages 5 and 6. Section 3 of the regulations provides that a person shall not be in possession of a drug which is prohibited by the Act unless he is authorized or licensed to have such possession.

Section 20 of the regulations provides as follows:

> "For the purposes of these regulations a person shall be deemed to be in possession of a drug if it is in his actual custody or is held by some other person subject to his control or for him and on his behalf".

By pleading guilty to the charge set forth in Exhibit 10, the respondent conceded that he was "in possession" of a stated amount of cannabis resin, that such possession was not legally authorized, and what is more important that the drug was either in his actual custody or was held by some other person subject to his control or for him and on his behalf.

These are precisely the elements of dominion and control which the court in Varga (supra) emphasized.

I find therefore that even the court in Varga would find that a person who was convicted of possession under the Dangerous Drugs Act of 1965 would fall within the scope of Section 241(a)(11) of the Act by reason of the necessary finding of dominion and control.

As a kind of corollary to this argument the counsel for the respondent advances another thesis which is to the effect that under the cases decided in England relating to the criminality of the possession of narcotics, it was the established law that the guilt of the defendant could be established without reference to the proof of any particular mental state or so-called "Mens Rea".

I have carefully examined all of the English cases referred to by counsel for the respondent in his brief from pages 26 to 39 and the cited Law Review Articles as well. In addition, I have referred to the somewhat more recent article in The New Law Journal, September 28, 1972, page 844, entitled "Dangerous Drugs - Possession, by O. A. S. Owen, and the more recent cases of Regina v. Irving,(1970) Crim. L. R. 642, Regina v. Marriott (1971) Crim. L. R. 172, and Regina v. Buswell, (1972) Crim. L. R. 50.

The one element which all of the cases and authorities agree upon is the statement of Lord Parker C. J. in Lockyer v. Gibb (1967) 2 Q. B. 243 as follows:

> "in my judgement it is quite clear that a person cannot be in possession of some article which he or she does not realize is, for example, in her handbag, in her room, or in some other place over which she has control".

In other words, completely innocent and unknowing custody or potential control over a drug is not possession within the meaning of the act and regulations.

The court in Regina v. Marriott characterized the state of the law as of 1970 as follows:

> "not all members of the House of Lords expressed themselves in precisely the same way, but, for the purposes of this present appeal, the result of Reg v. Warner may, broadly speaking and we hope with accuracy, be stated in this way: If a man is in possession, for example, of a box and he knows there are articles of some sort

> inside it and it turns out that the contents comprise, for example, cannabis resin, it does not lie in his mouth to say: "I did not know the contents included resin". On the contrary, on those facts he must be regarded as in possession of it and, if not lawfully entitled, would, therefore, be guilty of an offense such as that charged in the present case.

By pleading guilty, this respondent must have admitted therefore those elements which the court would have considered necessary to establish to sustain a conviction. The first of course would be that the material which the police discovered was, in fact, cannabis resin, a prohibited drug. The second would be the admission that he was, in fact, in "possession" of such drug by reason of the fact that it was either in his actual custody or held by some other person subject to his control or for him and on his behalf. Finally the plea of guilty would admit that he was aware that there was some extra substance in the Binocular case which was in his home but not necessarily that he knew it was cannabis resin.

Even if the holding of the court in Varga v. Rosenberg (supra) is considered to be definitive and binding on what constitutes possession for purposes of Section 212(a)(23) of the Act, it seems clear that this respondent by his plea of guilty admitted such dominion and control over the drug as would have given him the power of disposal.

The lack of a requirement that the state establish that the defendant, in addition to having the drug under his dominion and control, also knew that it was the particular drug whose idenity the government established, is not as foreign and outrageous to the system of jurisprudence

of the United States as counsel for the respondent would have me believe..

It is true that the large majority of cases involving prosecutions for "possession" under the Uniform Narcotic Drug Act require a knowledge by the defendant of the existence of the narcotics where found, in addition to the elements of immediate and exclusive control or at least joint control or constructive possession. (91 A.L.R.(2) 810). However, it has been held in a minority of jurisdictions that such knowledge is not an element.

For example in State v. Boggs, 57 Wn. (2d) 484 (1961) the court in sustaining the conviction of the defendant for unlawful possession of a narcotic drug stated as follows:

> "in essence it is the appellant's contention that awareness by the accused of the narcotic character of the article possessed is an essential element to this offense. The appellant bases this contention upon the assumption that an intent to possess a narcotic drug is required to be proved under a charge of unlawful possession of a narcotic drug. This assumption is erroneous. The Legislature by its enactment of controls against the evil of the narcotic traffic through the adoption of the Uniform Narcotic Drug Act has made mere possession of a narcotic drug a crime, unless the possession is authorized in the Act. RCW 69.33.230 provides:
>
> > "it shall be unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this chapter".
>
> In construing this statute in State v. Hinker, 50 Wn.(2d)809, 314 P. (2d) 645 (1957), we stated:
>
> > "whether intent or guilty knowledge is to be made an essential element of this crime is basically a matter to be determined by the Legislature.

> Had the Legislature intended to retain guilty knowledge or intent as an element of the crime of possession, it would have spelled it out as it did in the previous statute. The omission of the word with intent evidences a desire to make mere possession or control a crime."
>
> Our holding in the Hinker case, that guilty knowledge or intent is not an element of the crime of possession of narcotics under RCW 69.33.230, is controlling in the disposition of appellant's first contention".

See also the discussion by the court in State v. Callahan, 77 Wn. (2d) 27 (1969) for a discussion as to what constitutes"possession" under the laws of the state of Washington. As the court in that decision pointed out, possession of property may be either actual or constructive. Actual possession means that the goods are in the personal custody of the person charged with possession; whereas constructive possession means that the goods are not in actual physical possession, but that the person charged with possession has dominion and control over the goods. As the court there points out, in the previous case of State v. White, it had been held that where the evidence showed that the defendant had been living on the premises for a month, sharing the rent, bringing furniture into the house, inviting others to spend the night, the defendant had sufficient dominion and control over the premises to find him guilty of constructive possession of marijuana found in the living room of the house, although the defendant denied any knowledge of its presence.

See also the article in 58 Virginia Law Review 751 (May 1972), "Constructive Possession in Narcotics Cases, To Have and Have Not".

The note in 91 ALR (2) 810, states also that the fact that possession of narcotics is only for personal use, does not prevent it from being "possession" in violation of paragraph 2 of the Uniform Narcotics Drug Act, this contention having been uniformly rejected by the courts. See for example in State v. Reed (1961) 34 N.J. 554, 170 A (2d) 419, where the court said that if the legislature had intended to limit the illegality to possession with intent to sell, administer, compound, and etc., it could have so provided. By failing to so state it made "possession" only the ground of illegality. The court stated the person who possesses, has the power to dispense it to another.

The constitutionality of the lack of a requirement of scienter in criminal cases was discussed by the Supreme Court in U. S. v. Balint, 258 US 50 (1922). That case concerned a conviction for violation of Section 2 of the Narcotics Act, 38 Stat. 786, selling narcotics without a written form issued by the Commissioner of Internal Revenue. The court said as follows:

> "While the general rule of common law was that the scienter was a necessary element in the indictment and proof of every crime, and this was followed in regard to statutory crime even where the statutory definition is not in terms included, there has been a modification of this view in respect to prosecution under statutes, the purpose of which would be obstructed by such a requirement. It is a question of legislative intent to be construed by the court.
>
> It has been objected that punishment of a person for an act in violation of law when ignorant of the facts making it so

> is an absence of due process of law. But that objection is considered and overruled in Shevlin - Carpenter Company v. Minnesota, 218 US 57, 69, 70, in which it was held that in the prohibition or punishment of particular acts, the State may, in the maintenance of a public policy provide "that he who shall do them shall do them at his peril and will not be heard to plead in defense, good faith or ignorance".

The Court of Appeals for the Third Circuit gave consideration to the general problem of the lack of a requirement of a particular state of mind or intent in a criminal prosecution in U.S. v. Greenbaum which involved a prosecution for unlawfully introducing into interstate commerce cans of adulterated eggs. The court said after quoting U.S. v. Balint (supra) as follows:

> "while the absence of any requirement of mens rea is usually met with in statutes punishing minor or police offenses (for which fines, at least in the first instance, are ordinarily the penalties), we think that interpretation of Legislative intent as dispensing with the knowledge and wilfulness as elements of specified crimes is not to be restricted to offenses differentiable upon their relative lack of turpitude. Where the offenses prohibited and made punishable are capable of inflicting widespread injury, and where the requirements of proof of the offenders guilty knowledge and wrongful intent would render enforcement of the prohibition difficult if not impossible (i.e. in effect tends to nullify the statute), the legislative intent to dispense with mens rea as an element of the offense has justifiable basis. Notable among such offenses are dealings in adulterated foods and drugs."

See also the annotation at 152 ALR 755 for a general discussion of prosecutions for violation of food laws where ignorance, mistake of fact, lack of criminal intent or good faith may be present.

I conclude therefore that the requirements for a conviction in 1968 under the Dangerous Drugs Act of 1965, including as they do as a bare minimum the proof of or admission of possession, dominion and control, although perhaps different from the majority of jurisdictions in the United States, is actually followed in some states of the United States dealing with possession of drugs. The absence of a requirement for scienter or mens rea is followed by the majority of courts of the United States in other types of convictions leading to a possible sentence to penal servitude, and is not so repugnant to the principles of jurisprudence of this country that Mr. Lennon's conviction should not be recognized as a conviction relating to the possession of marijuana.

It should be noted in this connection that the phrase "conviction of violation of a law relating to the possession of marijuana" is broader than "a conviction for the possession of marijuana". For example, in Matter of P - C -, 7 I&N Dec. 100, the alien involved had been convicted under Section 11502 of the Health and Safety Code of the State of California for having agreed to sell heroin but having in fact furnished another substance in lieu of the narcotic. It was argued in the course of that proceeding that the statute, in fact, deals with fraud and false pretenses and is not a statute relating to a narcotic drug since it was entirely clear that no narcotic drug had in fact changed hands, nor was such exchange even contemplated by the alien. The Board of

Immigration Appeals held however that a conviction under the named section was, in fact, a conviction "relating to the sale of narcotics" and that the phrase "relating to" is a term of broad coverage.

A situation somewhat analogous to the relationship between the respondent's conviction and his immigration excludability exists in the body of cases involving prosecutions under 18 USC 1407. That provision of law requires a registration upon the crossing of a border of the United States by a narcotics addict, user or violator, with a possible $1000 fine or up to three years imprisonment as a criminal sanction. The annotation in 4 ALR (Fed) 616 shows that wilfulness is not an ingredient of the statute but that it is mala prohibita.

For example, in Adams v. US. C.A. 9, 299 F (2) 327 (1962), the individual concerned had been convicted in California for the possession of marijuana and committed to the Youth Authority of that State. He was charged with having crossed the border without reporting his conviction and the court excluded evidence on the effect of the expungement of his record by an honorable discharge from the Youth Authority. The court pointed out that Section 1407 should not depend on all of the peculiarities of the laws of the various states. It was stating in effect that a conviction for the purposes of Section 1407 is a conviction even though it might have been expunged by the operation of the laws of California. In Smith v. U.S. (1963) C.A. 9, 321 Fed. (2) 731, Cert. Den. 375 U.S. 988, the subject had been convicted in Arkansas for a violation of narcotic laws and sentence had been suspended on condition that he leave the State.

The court sustained his conviction under Section 1407 for failing to report this conviction, rejecting the contention that the court imposed condition of leaving the State was an unconstitutional condition and therefore no valid conviction under the Arkansas laws. The court assumed for the purposes of the case that an illegal sentence had been imposed but held that since the defendant would have been entitled to request that he be resentenced, the illegal sentence did not vitiate the conviction under 1407.

In Haserat v. U.S. C.A. 9 321 F (2) 582, (1963), the court was concerned with a conviction under the California Health and Safety Code for agreeing to sell narcotics and selling something else, as was the concern of the Board of Immigration Appeals in Matter of P - C -, 7 I&M 100 (supra). It was held that this was a conviction for a narcotic or marijuana law violation which required registration upon crossing the border and failure to do so was a violation of Section 1407.

There is therefore a considerable volume of law relating to prosecutions for violation of 18 USC 1407 which are based on the existence of an underlying conviction of the defendant for a narcotics or marijuana violation where the courts have refused to consider relevant the mental state of the defendant, the legality of the original conviction or even its expungement under the laws of that state.

The Board of Immigration Appeals in Matter of Romandia-Herreros, 11 I&N Dec. 772 gave consideration to an alien who had engaged in activity relating to the possession of codeine and morphine.

However, after indictment in California and while out on bail, he left for Mexico and the California proceedings were not completed. However, under the laws of Mexico he was prosecuted in Mexico for a crime committed in a foreign territory for a violation of law which would also have been a crime in Mexico, namely the possession of morphine and codeine. The Board of Immigration Appeals held that he was deportable under Section 241(a)(11) of the Immigration and Nationality Act despite his conviction in a foreign state whose only claim to jurisdiction over the crime was the fact that the defendant was a national of that country, all of the alleged criminal acts having taken place in the United States. A somewhat similar decision was reached in Matter of Adamo, 10 I&N Dec. 593, which did not relate to a narcotics conviction but a conviction for embezzlement before an Italian Court for acts which had been committed entirely in the United States. The Board of Immigration Appeals stated that the record of a foreign conviction showing that it was a penal conviction is conclusive evidence of the nature of a conviction. It stated that it could not go behind the record to inquire into the legal status of the tribunal other than in those rare exceptions relating to convictions in absentia or convictions for political offenses. The difficulty the Board of Immigration Appeals refers to is amply exhibited by the instant case when we seek to explore the delicate nuances of the state of mind required for convictions under the Dangerous Drugs Act of 1965.

It will be noted that Section 212(a)(23) refers to the excludability of a person convicted of a crime relating to the possession of marijuana

whereas the respondent herein stands convicted of possession of cannabis resin. It is urged at some length, that when Congress used the term "marijuana" in the section of the consideration, it did not intend to include "cannabis resin".

The respondent offered in his behalf the testimony of Dr. Lester Grinspoon, Associate Clinical Professor of Psychiatry at Harvard Medical School whose medical qualifications qualify him fully as an expert in this field. A book written by Dr. Grinspoon entitled "Marijuana Reconsidered" (Harvard University Press, 1971) was made part of this record as Exhibit 13. Reference to Exhibit 13, beginning at page 30 thereof, indicates that since 1753 the name Cannabis Sativa has been given to the plant known as Indian Hemp. Cannabis Sativa is one of a relatively small number of so-called hallucinagenic plants. It is an easily grown plant, widely cultivated or growing naturally in many parts of the world. It is a source not only of hallucinagenic material, but also of hemp fibre and a seed oil. Although the plant may differ widely in its appearance depending upon the climate under which it is grown, it is generally agreed that all specimens are of a single species. The plant and its products are referred to by a wide number of different terms, depending upon where it is grown and where it is used. The male and female plant differ markedly in appearance, though both bear flowers. The chemical compounds responsible for the intoxicating effect of cannabis are commonly found in a sticky, golden resin which, during periods of the growing season's greatest heat, is exuded from the female flowers and is found also in the adjacent leaves

and stalks. Although it is generally held that the plants active agents are found solely in the resin produced by the female flower parts there is insufficient evidence to support this hypothesis. It is possible that the other parts of the female and male plants may contain active substances. The resin and resin bearing parts of hemp are prepared for use in a variety of ways. Three grades of the drug are prepared in India and serve as a kind of standard against which preparations produced in other parts of the world are compared for potency. They are bhang, ganja, and charras. The least potent and cheapest preparation, bhang, is derived from hemp, grown in the plains areas and may consist simply of hemp leaves picked from door yard plants, dried, and then crushed into a coarse powder. The resulting drug is of inferior quality and may be smoked or made into a decoction. Ganja, the second strongest preparation, is prepared from the flowering tops of cultivated female plants. The dried tops, with their exuded resin are generally smoked sometimes mixed with tobacco leaves. Ganja is estimated at being two or three times as strong as bhang and is more desirable and costlier.

Pure resin of the pistillate flowers is called charras, and is the most potent of the intoxicants. The resin which is collected from the plants may be treated somewhat before it is sold and consumed but the treatments are largely mechanical in nature. The resin may be sifted to eliminate dirt and impurities, shaped, dried, and sliced into sheets. Charras or cannabis resin is called hashish in Egypt, Asia Minor and Syria.

The essence of Dr. Grinspoon's testimony is contained on page 41 of his book where he states that most westerners and certainly most Americans who use cannabis take it in a form of cigarettes which are roughly comparable to Indian bhang in content, mode of preparation and potency. As such, such cigarettes are about 1/5 to 1/8 the potency of Indian charras and in general the hand rolled cigarette predominates in the United States.

What Dr. Grinspoon is urging in his testimony is that the common usage in the United States limits the term "marijuana" to cigarettes composed of the dried leaves and perhaps seeds and miscellaneous parts of the marijuana plant as distinct from cannabis resin which is an exudation of the female plant during its flowering period.

The legislative history of Section 212(a)(23) and 241(a)(11) is not as explicit as one might wish in defining the term marijuana. The term first appeared in the Immigration and Nationality Act of 1952 but only in reference to activities relating to traffic, sale or possession for such related purposes. The statute contains no definition of marijuana. The Narcotics Control Act of 1956 was aimed at various aspects of the narcotics problem. The immigration sections were only one part of the Congressional effort. The immigration modification was aimed directly at specifically including mere possession of narcotics or a conspiracy to violate the narcotic laws as grounds for excludability or deportability. It was the Congressional belief that a conviction for the possession of

marijuana would constitute a conviction for the possession of narcotics and consequently would call the section into operation.

In U.S. Code Congressional and Administrative News, 84th Cong. 2nd Session, (1956) Volume 2, page 3294, footnote #1, is found the following quotation "general references to narcotics in this report includes within the term marijuana which is similarly treated with respect to penalties, etc."

It is clear therefore that in drafting the Narcotics Control Act of 1956, Congress believed that when it used the term narcotics, it was including the term marijuana. Accordingly, there was no need for Congress to define marijuana in a section where it had used the term "narcotics". Congress' misconception as to the inclusion of "marijuana" within the scope of "narcotics" led to the subsequent court decisions and further amendment of the statute in 1960 to specifically include marijuana by name. In connection with the 1960 amendment here again was no definition. However, in the "Narcotic Control Act of 1956" which included a number of different sections relating to different provisions of law, all of which were enacted as a unit, entitled "The Narcotic Control Act of 1956", there occurs title 21, Section 176(a), relating to the smuggling of marijuana, which specifically states "as used in this section, the term "marijuana" has the meaning given to such term by Section 4761 of the Internal Revenue Code of 1964." Section 4761 defines the term "marijuana" as including all parts of the plant including the resin extracted from any part of such plant. It is true that Section 176(a) states "as used in this section," in

defining the term marijuana. It does not seem unreasonable to me that if Congress included the 1956 version of Section 212(a)(23) in a considerably broader Act and in one portion of that Act defined marijuana, to conclude that the same definition of marijuana would apply to all uses of the term within the various discreet sections of the larger Act, whether specifically added to such sections or not. It certainly would be a bizarre interpretation of Congressional intent to believe that Congress would define the term for one section within the larger Act and expect a different interpretation for the same term to be applied in Section 212(a)(23) without making a specific reference to the difference in meaning. If we consider the term to have been adequately defined in 1956 by the reference to the Internal Revenue Code, such definition would continue through the 1960 amendment which merely added marijuana disjunctively to the possession section at its beginning.

If we assume however, that the Congressional efforts to define the term outlined above were inadequate to reach the term as used in Section 212(a)(23), the question which has to be answered is what Congress would have intended to cover by the use of the term marijuana, had the matter received its specific attention. The record is clear in the 1956 and 1960 amendments that Congress was attempting to make excludable and deportable aliens convicted of mere possession of narcotics in general and marijuana in particular. As indicated above, cannabis resin is the direct natural product of the cannabis sativa plant. It is a resin naturally exuded by the plant. It contains in a concentrated form the hallucinagenic agent

which is the very basis for the attitude towards marijuana. To imply that the Congress, intent as it was on reaching for exclusion and deportation persons convicted of possession of marijuana would have rejected a person convicted of the possession of the concentrated natural products of the marijuana plant is to corrupt statutory interpretation into a futile exercise of semantics.

Ironically enough, there have been several recent decisions to which neither the respondent nor the government have referred me, in which the present contentions of the government and respondent have been reversed. In these cases, it is the government which urged that marijuana and hashish were different and the criminal defendant therein concerned that they were identical. These were cases which arose subsequent to the decision by the Supreme Court in Leary v. U.S. 395 US 6, 89 Supreme Court 1532 (1969). In that case the Supreme Court held unconstitutional the presumption in Title 21, Section 176(a) of knowledge of illegal importation of marijuana arising from possession, on the ground that there was widespread cultivation of the plant in the United States and that there was no necessary or reasonable connection between coming into possession of the dried leaves and a presumption of knowledge that the same was illegally imported from another country. In U.S. v. Piercefeld, 437 F (2d) 1188 (1971) the defendant argued that with respect to the irrationality of the presumption of knowledge of importation from the sole fact of possession, there could be no distinction between hashish and marijuana. He was accused of the unlawful importation of hashish and since there was no direct evidence of the unlawful

importation, the court must have relied on the presumption in Section 176(a). The Court of Appeals held however that the Trial Court had not, in fact, utilized the presumption and that there was sufficient evidence to support a finding of unlawful importation of hashish. It referred to the testimony of a chemist for the United States Customs Laboratory who stated that hashish had never been manufactured in the United States and that it would be necessary to have 625 pounds of marijuana with the highest resin quality to make one pound of hashish from marijuana grown within the United States.

In U.S. v. Cepelis, 426 F. 2d 137 (1970) (C.A. 9), the court was confronted with the identical situation. In this case also, the government although arguing that hashish was marijuana within the meaning of 21 USC 176(a), the government contended that hashish was not within the scope of Leary v. U.S., and that by reason of climatic considerations and the difficulty of producing domestic hashish, users would be likely to know that the hashish was illegally imported. The court concluded that the record before it was inadequate for a proper conclusion and remanded the case for a finding by the trial court as to whether it had, in fact, relied on Section 176(a) presumption, and if so to grant a new trial and explore the nature of hashish. On remand the trial court affirmed that it had not relied on the presumption but had relied on the evidence before it and concluded ~~the~~ on a factual basis that the defendant had actual and not merely presumed knowledge of the illegal importation. No case has been found holding that hashish is different from marijuana in the context of a prosecution under a statute specifically mentioning only marijuana.